IN THE

Supreme Court of the United States

OCTOBER TERM—1951

No. 178

UEBERSEE FINANZ-KORPORATION, A.G.,

Petitioner,

—v.—

J. HOWARD MCGRATH, Attorney General, as Successor to the Alien Property Custodian

ON A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR PETITIONER

THURMAN ARNOLD,
EDWARD J. ENNIS,
HARRY M. PLOTKIN,
Attorneys for Petitioner,
Uebersee Finanz-Korporation, A.G.

ARNOLD, FORTAS & PORTER,
Ring Building, Washington, D. C.

GALLAGHER, OSHERMAN, CONNOR & BUTLER,
Bowen Building, Washington, D. C.

EDWARD J. ENNIS,
165 Broadway, New York, N. Y.
Of Counsel.

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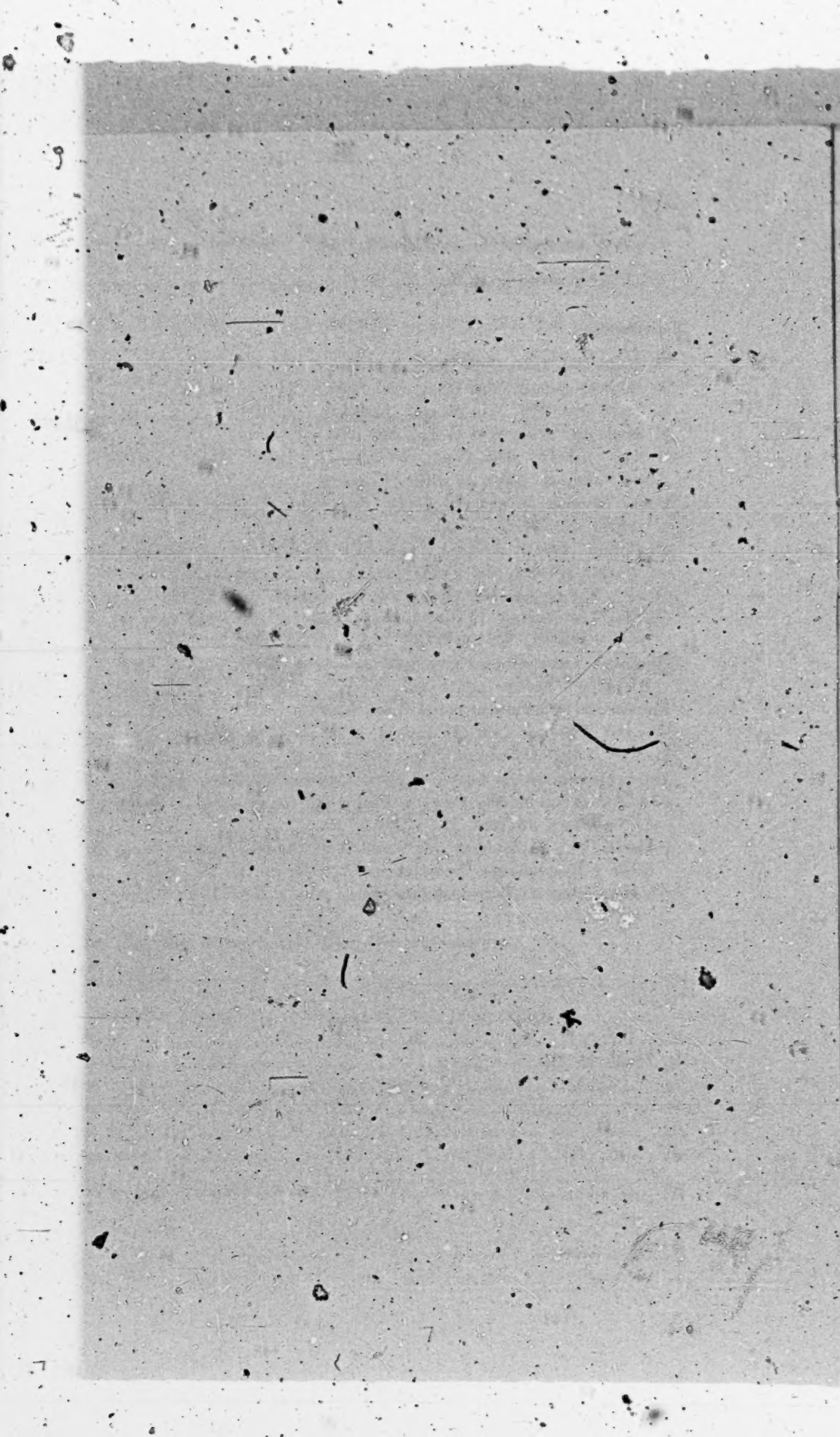

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Opinions Below

The opinion of the District Court (R. 41) is reported in 82 F. Supp. 602. The first opinion of the Court of Appeals, Circuit Judge Clark dissenting without opinion (R. 2326), is reported in 191 F. (2d) 327. The second opinion of the Court of Appeals "Memorandum on Appellant's Motion for Clarification of the Opinion of the Court" (R. 2338), Circuit Judge Clark not participating, is not reported.

Jurisdiction

The judgment of the Court of Appeals (R. 2328) was entered on February 8, 1951. An order of May 8, 1951 (R.

2337) extended the time for filing the petition for writ of certiorari to July 8, 1951. The petition for writ of certiorari was filed July 7, 1951 and was granted by an order filed October 15, 1951 (R. 2336). The jurisdiction of this court rests on 28 U. S. C. 1254(1).

Questions Presented

1. Whether a certain usufruct in the stock of a neutral corporation under which an enemy had during his lifetime the right to 80% of the dividends and perhaps the limited right to vote the stock to protect the dividends constitutes such ownership or enemy taint that the Alien Property Custodian may retain and confiscate all the American property of that neutral corporation in a case where the enemy never exercised either his right to collect dividends or attempted to vote the stock and where legal title to the shares, and all other rights in those shares (except the rights of the usufruct) were owned by neutrals.

2. Assuming that the Alien Property Custodian is not required to return to the neutral corporation any indirect beneficial interest in the vested property given to the enemy by the usufruct, may he retain in addition to such enemy interest rights and beneficial interest of a neutral which are separable from the enemy interest. In other words, should not the Custodian's right of confiscation of American property of a neutral corporation be limited to the confiscation of interests held directly or indirectly by an enemy?

Statutes Involved

The relevant portions of the Trading With the Enemy Act, as amended, are set forth in the Appendix.

Statement of the Case

The following brief statement we think presents all the facts necessary to decide the issue before this Court, *i.e.*, whether the property seized by the Alien Property Custodian can be confiscated under the Trading With the Enemy Act.[1]

The property involved is practically all the assets of petitioner, a neutral Swiss corporation. These assets consist of a majority interest in the stock of a brewing company and of a company engaged in the retail distribution of gasoline. These American corporations were not and could not have been used for the purpose of economic war. They were never used for the concealment of enemy assets. No dividends or credits of any kind were ever accumulated and held as assets of or for the use of any enemy government or of any enemy citizen.

The legal title to the entire capital stock (except neutral directors' three qualifying shares) of petitioner, which owned these seized American assets, has always been held by Fritz von Opel, a neutral citizen of Liechtenstein who resided in the United States from 1940 to 1950. Petitioner (the neutral Swiss corporation) never engaged during the war in any activity on behalf either of an enemy government or an enemy citizen. It accumulated no dividends or credits in Switzerland which were held for any enemy government or enemy citizen. No control over the petitioner either by voting stock, or by any other action, was exercised by an enemy during the war.

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1 The detailed facts set forth in the long record are concerned principally with the claim of the Government that the former German owners of the property made a sham gift in 1931 (R. 43). The District Court, however, found that a bona fide gift was made (R. 54-55), and thus eliminated from further consideration much of the material in the record.

The only enemy interest in petitioner's stocks arose out of a gift agreement (R. 1805-7) made in 1931 between Fritz von Opel and his German parents, Wilhelm and Marta von Opel, which obligated Fritz to pay his parents 80 per cent of the dividends on his stock in petitioner which had been purchased out of the proceeds of the gift. The dividends were payable only during the lives of the parents and only in the event that demand for them was made. Failure to demand dividends during the parents' lives forfeits the right to dividends which then become part of the gift to their son (R. 1807) and consequently are not property of the parents to be distributed as part of their estate. The purpose of the agreement reserving an option on 80 per cent of the income was to provide against possible need of the parents in their old age (R. 130, 134, 559, 1825). The parents were wealthy and never demanded the dividends.

In 1935, as security for the performance of the obligation of Fritz to pay his parents 80 per cent of the dividends on his stock, the certificates of petitioner's stock owned by Fritz were put in escrow under an arrangement which, in German law, is called a usufruct (neissbrauch). Since the term "usufruct" has caused some confusion in the opinions below, it is important to understand the precise legal and equitable rights which the German parents acquired under it.

Section 1081 of the German Civil Code[2] provides "Whenever a bearer security * * * is the object of a usufruct, then in such case the usufructuary and the holder of legal title jointly have the right of possession * * * " (R. 1989). That joint right to possession is secured by the same sort of

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2 Two English translations of the German Civil Code are available. Loewy, *The German Civil Code* (1909) and Chung Hui Wang, *The German Civil Code* (1907).

arrangement which in American law would be achieved by placing the stock in escrow. Thus Section 1082 provides that on request of either party the securities are "to be deposited with a depositary with the stipulation that the release of the instrument may only be requested jointly by the usufructuary and the holder of the legal title" (R. 1989).

The effect is to give the usufructuary the security of an escrow to carry out whatever agreement has been made with respect to his right to dividends, in this case 80 per cent during the lifetime of the usufructuary. At the same time it gives the legal owner of the stock joint control identical with control under similar escrow agreements under American law.

In addition, the usufructuary has a voice in the management of the property limited to the protection of his right to dividends. How that voice in the management is to be exercised is unsettled. There are no decided cases. Some commentators hold that the usufructuary has no voting right whatever; others hold that the usufructuary can only vote with regard to income; and a third position is that a usufructuary has all the voting rights. We set out below the finding of the trial court in this respect in its entirety.[3]

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3 "52. A right of usufruct, once established, is under German law an *in rem* right in property. A person having a usufruct in property has a right:

(a) to the enjoyment of the property or, in the case of money or securities, to the income from the securities;

(b) to co-possession of the property together with the person holding legal title to the property;

(c) to a voice in the management of the property insofar as the maintenance and preservation of the usufructuary's rights under subsection (a) above are concerned;

(d) to prevent the sale or disposition of the property as a result of his right to co-possession;

For purposes of decision in this case, it is unnecessary to speculate which of these three theories on the right of a usufructuary to vote would be adopted if presented to a German court. The German parents never claimed any right to vote and throughout the existence of the usufruct, the stock was voted by or for the neutral holder of legal title, Fritz von Opel (R. 1479, 2048, 2058).

The trial court found that up to 1940 major policies of petitioner were managed by Hans Frankenberg (R. 58), a Swiss banker who represented Wilhelm in 1935 for purposes of the escrow of the stock. This management was not accomplished by voting control. The control is inferred by the District Court simply because Frankenberg was consulted and his advice obtained (R. 2014). Even if the following of such advice could be called "control" by Wilhelm von Opel it ended before the United States was at war. Frankenberg prior to the war had become a resident of the United States in 1940. At the time of the outbreak of the war was an applicant for United States citizenship, which was later granted him. The trial court found that there was no evidence that he exercised any control over the petitioner after the United States entered the war or even after he came to the United States in 1940 (R. 58). The Government attempted to escape the effect of this finding by resting its case on a presumption that the management control, found by the trial court to have

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(e) the German Civil Code does not mention whether the usufructuary, for the protection of his income, has any voting rights. In the absence of a decided case the legal commentaries speculate in three different directions. One position is that title owner has all voting rights and the usufructuary no voting rights whatsoever. The second position is that the title owner has a voting right for all measures which have nothing to do with income while the usufructuary can vote in regard to income. The third position is that the usufructuary has all the voting rights."

been exercised by Frankenberg as agent for Wilhelm before he was an enemy and before the war, was presumed to continue during the war.[4] This was in effect a charge without evidence that Frankenberg had committed the grave offense of trading with the enemy while his application for citizenship was pending. The trial court therefore made it clear that its finding that Frankenberg's agency continued during the war only meant that his technical co-possession of petitioner's shares necessary to continue the usufruct was presumed to continue and not that actual control over the affairs of petitioner, as agent of an enemy, could be presumed to continue in these circumstances (R. 1782-3).

In the light of these facts, the findings of the court show that the following rights existed in the stock of the Swiss corporation at the outbreak of the war:

(1) Fritz von Opel, a neutral, had both legal title and beneficial ownership in the stock of the neutral corporation. That right was subject only to an option, never exercised, on the part of his parents to compel him to pay them on demand 80 per cent of the dividends during their lives. At the time of the seizure of the property in 1942 the parents were over sixty-five years of age. The father died in 1948 and the mother survives.

(2) The stock of the petitioner was delivered to a Swiss depositary in escrow as security for the future performance of Fritz von Opel's obligation to pay 80 per cent of the dividends to his parents if demanded.

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4 Under these circumstances the legal presumption is directly to the contrary and such agency is terminated by the outbreak of war. *Sutherland* v. *Mayer*, 271 U. S. 272, 285, 297; *Williams* v. *Paine*, 169 U. S. 55, 73; *Insurance Co.* v. *Davis*, 95 U. S. 425, 429-30.

(3) Both legal control and actual control of the corporation were in the neutral Fritz von Opel who continuously voted the stock; directly or by proxy, his right to do so being subject only to a disputed question of German law in the event his parents should demand the right to vote. This demand was never made.

(4) The American corporate stocks which the Office of Alien Property, seeks to confiscate under these circumstances was wholly owned by the neutral Swiss Corporation.

Specification of Errors to Be Urged

The petitioner urges that the Court of Appeals erred as set forth in the petition for a writ of certiorari (pp. 9-10).

The Opinions Below

The District Court held that the mere existence of the unexercised enemy usufructuary interest in the stock of the petitioner standing by itself justified the permanent confiscation of the American assets of petitioner. As two additional and make-weight considerations, the District Court stressed certain biographical facts concerning Fritz von Opel and a stock interest which petitioner held in a Hungarian subsidiary.

The court noted that Fritz von Opel lived in Germany from his birth in 1899 to 1929 and had participated in behalf of Germany in international sports events, as indicating that his roots remained in Germany. The court also stressed that, pursuant to the naturalization laws of Liechtenstein which require some payment, Fritz von Opel paid approximately $10,000 in connection with his naturalization there (R. 53). The court also stated that he did not take an oath of allegiance to Liechtenstein, which could be waived under the law, and

until 1941 indicated a continued interest in the welfare of Germany. The court, however, explicitly found that Fritz had not resided in Germany since 1929, that the total amount of time he spent in Germany between 1929 and 1939 did not exceed 10 per cent and then he spent no time whatever in Germany after 1939. The court also found that Fritz von Opel's status as a citizen of Liechfenstein was not open to attack and the court did not intimate that any sympathy he may have had for Germany existed after war was declared on the United States (R. 53).

The court found that petitioner owned the entire stock interest in Transdanubia Bauxite A.G., a Hungarian corporation, which shipped bauxite to Germany just prior to the war with the United States. The court did not, however, find that any bauxite was shipped after the war with the United States (R. 56). On the the contrary, the court found that in the spring of 1941, Fritz von Opel refused requests from the officers of Transdanubia for additional funds to continue mining operations (R. 57). The court admitted that there was no evidence that petitioner voted the stock in Transdanubia from 1940 through 1945, or that either the petitioner or Fritz von Opel received any income from Transdanubia at any time (R. 56-57). The court did not suggest that any question of trading with the enemy was involved under these circumstances. The only inference made adverse to the petitioner was that it never took any affirmative steps after war broke out to sever its relations with Transdanubia without indicating what possible steps could have been taken (R. 56).

The Court of Appeals did not mention or rely on these two make-weight considerations in the District Court decision. It held that the usufruct agreement itself gave to the enemy "ownership of the economic benefits of American business." It stressed the fact that delivery of the stock in

escrow to secure the enemy in that "ownership" was a right *in rem* in the Swiss stock. It concluded that because of this "right in rem" all the American assets of the Swiss neutral corporation could be confiscated.

Since the usufruct, which was the sole right which the enemy had, was only a life interest in 80 per cent. of the dividends and was clearly separable and could be seized without taking the assets of the neutral corporation, a petition was filed to clarify the opinion as to why, if any property of petitioner should be confiscated, the Custodian should not be limited to the seizure of the enemy owned usufruct, *i.e.*, the right to demand dividends and the exercise of whatever voice in management existed to protect that right. In answering this question the court mistakenly said that the interest of Fritz von Opel in the stock was a mere contract right against his father[5] and for that reason the American assets of petitioner, a neutral corporation which had never been utilized by the enemy, could be confiscated.

The trial court suggested that Fritz von Opel might have an independent suit against the Custodian for his neutral interest in the assets (R. 51). This question is not relevant here. We do not represent Fritz von Opel in this case. We are here asserting the right of a neutral corporation, not utilized by or under the command of the enemy, to prevent its own property from being confiscated in a case where it never lost its neutral status by becoming a cloak for the enemy.

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5 This is contrary to all the testimony, to the German law, and to the specific finding of the District Court which reads in part as follows: "Legal title to the 600 Opel shares passed to Fritz von Opel by the agreement of October 5, 1931." (R. 55.)

Summary of Argument

I

By the wartime amendment of Section 5(b) of the Trading With the Enemy Act, extending the vesting power to property here of all foreign nationals, Congress did not intend to authorize the Custodian to retain and confiscate the vested property of a neutral Swiss corporation not shown to be utilized by an enemy for economic warfare or concealment of enemy interests or, at least, not shown to be subject to enemy command and control.

The former opinion of this Court in this case makes it clear that the purpose of the amendment was to reach property utilized or actually controlled by the enemy. The petitioner was not in fact utilized by an enemy in any manner. Its stock was voted by neutrals. The management of the two American companies, producing and distributing beer and gasoline, was continued by the Custodian after he vested the stock. Moreover, the enemy's limited usufruct in petitioner's shares did not give an enemy power to utilize petitioner for enemy purposes even if that had been desired. The petitioner was not utilized to conceal or cloak any enemy interest in American property. The only enemy interest was in Swiss property, petitioner's bearer shares, and this interest was well known and not concealed.

The relevant statutory provisions and judicial decisions make it clear that actual *de facto* control of the corporate affairs by enemies in enemy territory or ownership of a majority of the stock is necessary to establish enemy control or enemy taint. Weighty practical considerations involving protection of American property abroad and friendly alien property here support this view. In this case no enemy control or ownership of petitioner's shares was present. Consequently the limited enemy

usufruct in petitioner's shares did not make petitioner an enemy.

II

Even if the enemy usufruct in petitioner's shares, at all times located in Switzerland, can be confiscated any separable neutral interests in petitioner's property owned by neutrals should be returned. If petitioner's shares were in the United States the Custodian could vest the enemy interest in the shares. In other words where, prior to the war, stock is innocently pledged or put in escrow to secure a collateral enemy obligation only the interest of the enemy can be confiscated.

III

The fact that the neutral owner of petitioner's shares was born in Germany and was a German citizen before he left Germany and became a naturalized citizen of Liechtenstein in 1939 is irrelevant on the question whether petitioner is an enemy. Similarly irrelevant is the fact that petitioner owned all the stock of a Hungarian corporation in view of the trial court's determination that petitioner did not carry on trade with the enemy within the meaning of the Act.

Argument

The Fifth Amendment protects friendly aliens, including Swiss corporations, from confiscation of their property by the Government of the United States. This protection is removed only if a hitherto friendly alien becomes an enemy as defined in the Trading With the Enemy Act. The Custodian's power to confiscate enemy property is wholly statutory and limited to the terms of the Act. His claimed authority to confiscate all of petitioner's United States property depends entirely upon whether or not

petitioner is an enemy or ally of enemy within the meaning of the Act. The petitioner, which since 1932 has invested practically all of its assets in the United States, in reliance on its economic and governmental stability, submits that it has never been, or acted as, an enemy or ally of enemy of the United States within the meaning of the Trading With the Enemy Act or otherwise.

I

In the absence of any enemy utilization of a neutral corporation or any enemy voting control of its stock, its property, if seized by the Alien Property Custodian, should thereafter be returned.

The effect of the opinion in the court below is to hold that the mere delivery in escrow of stock in a neutral corporation by a neutral stockholder long prior to the war, in order to secure the future performance of a personal agreement between that stockholder and an enemy, justifies the confiscation of the entire American assets of such neutral corporation.

Such an extreme view can only be supported on the theory that the 1941 amendment of Section 5(b) of the Trading With the Enemy Act (amended by Section 301 of the First War Powers Act of December 18, 1941, c. 593, 55 Stat. 838) has made a revolutionary change in our attitude towards neutral corporations; that the aim of seizure of the American assets of neutral corporations is not protection against economic warfare or against concealment of enemy assets but rather to reach out and confiscate all of the American assets and business of those neutral corporations in order to confiscate any German interests in such corporations. This we think was not

intended by Congress in amending Section 5(b) in the absence of utilization, or at least in the absence of control, of the neutral corporation by enemies.

The petitioner made its investments in the vested shares in the two American companies which sell beer and gasoline, in 1932 and 1933, long before the war. When petitioner purchased the controlling stock interest in both companies it continued their former American management (R. 2026-28). The Custodian has continued the same management which demonstrates that the Custodian was convinced that this management was never a cloak for the enemy (R. 1183). Report, Office of Alien Property for the Fiscal Year Ending June 30, 1945, page 89.

At the outset the fundamental distinction must be drawn between the vested American assets of petitioner, a neutral corporation, and vested American assets owned directly by enemy nationals which may be not only vested but also confiscated by virtue of such ownership. It is submitted that in the present case where petitioner is the sole owner of the vested property, and the only asserted enemy interest is a limited usufruct in its shares, the petitioner does not become an enemy within the meaning of the Act unless it is utilized by the enemy either as a cloak for enemy assets or for economic warfare. Section 2 of the Act defines a corporate enemy as including a corporation incorporated in enemy territory or incorporated elsewhere outside the United States and doing business in enemy territory. Section 7(c) authorizes vesting of any property found to be "owing or belonging to or held for, by, or on account of, or on behalf of, or for the benefit of an enemy or ally of enemy . . . ." Section 9(a) provides that any person not an enemy or ally of enemy may sue to recover vested property. Under these original provisions property of a neutral corporation could not be confiscated because

of enemy ownership of even a majority of its stock. The Custodian's contention that because of such stock ownership alone the vested property was held "on behalf of" the enemy stockholders was rejected in the absence of actual utilization of the neutral corporation's property by the enemy. *Behn, Meyer & Co.* v. *Miller*, 266 U. S. 457. The Custodian was restricted to obtaining the enemy owned stock. *Hamburg-American Co.* v. *United States*, 277 U. S. 138, 140.[6]

The reason for this policy was not tenderness towards our enemies. It was rather consideration of the economic interests of allies and friendly neutrals. To seize the American assets of a corporation organized in a neutral country on the sole ground that prior to the war an enemy had acquired an interest in its stock is a serious injury to the neutral country. It interferes with the wealth which is subject to taxation in that country, it puts a handicap upon the trade of the corporations domiciled there which is also a source of wealth. And finally it takes away dollar balances where the assets of a neutral corporation are seized in the United States. Such injury to neutral interests was not contemplated by the original Trading With the Enemy Act.

The 1941 wartime amendment of Section 5(b) extended the vesting power to the property of any foreign national.

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6 Even in the case of property directly owned by private enemy nationals vested during the hostilities it has been the practice of modern nations to return it or arrange for compensation after the war. See generally for the history of treatment of enemy property by the United States: John Dickinson, *Enemy Owned Property: Restitution or Confiscation*, 22 Foreign Affairs, 126 (1943); Gathings, *International Law and American Treatment of Alien Enemy Property* (1940); John Bassett Moore, *International Law and Some Current Illusions* (1924), pp. 14-25.

It is clear that Section 5(b) was not amended in derogation of the sound principle not to inflict injury on allies or neutrals because of the mere existence of a German interest in the stock of a neutral corporation. On the contrary, the amendment was passed only to protect against neutral corporations engaging in economic war or concealment of enemy assets under the cloak of neutrality.[7]

The former rule was changed not because it was wrong in principle, but because it was too inflexible to afford adequate protection. This is clear from the former opinion in this case. In discussing the change made in Section 5(b), Justice Douglas said (332 U. S. 484):

> "* * * The scheme of the Act as it was then drawn was 'to seize the shares of stock when enemy owned rather than to take over the corporate property.' *Hamburg-American Co.* v. *United States*, 277 U. S. 138, 140.
>
> That was at least one respect in which the Act had a 'rigidity and inflexibility' that was sought to be cured by the amendment to §5(b) in 1941. See H. R. Rep. No. 1507, 77th Cong., 1st Sess., p. 3. It was notorious

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[7] The report of the Judiciary Committee on Title III containing the amendment of §5(b) stated (Senate Report No. 911, 77th Cong., 1st Sess., p. 2): "This provision of the bill to a considerable extent follows the operation of existing law and is a logical extension of the present foreign property control system which has been operating very satisfactorily for almost two years. The extension could be put into immediate operation with a minimum amount of trouble or dislocation of legitimate activities. It is essential that the Government have this power, a power exercised by every other wartime government and exercised by this Government during the last war." Thus it is clear that the principal purpose of the amendment was to extend the vesting power but there is no intimation of an intention to extend the confiscation power to property of neutrals not acting for an enemy.

that Germany and her allies had developed numerous techniques for concealing enemy ownership or control of property which was ostensibly friendly or neutral. They had through numerous devices, including the corporation, acquired indirect control or ownership in industries in this country for the purpose of economic warfare. Sec. 5(b) was amended on the heels of the declaration of war to cope with that problem. Congress by that amendment granted the President the power to vest in an agency designated by him 'any property or interest of any foreign country or national thereof.' *The property of all foreign interests was placed within reach of the vesting power not to appropriate friendly or neutral assets but to reach enemy interests which masqueraded under those innocent fronts.*

Thus the President acquired new 'flexible powers' (H. R. Rep. No. 1507, supra, p. 3) to deal effectively with property interests which had either an open or concealed enemy taint." (Emphasis supplied.)

The Court was precise in pointing out why the former rule was inflexible. The reason was not that it failed to permit confiscation of minority enemy interests in neutral corporations. The Court explains the loophole that the amended Section 5(b) was intended to close was the fact that under the former Act (332 U. S. 486):

"All a corporate claimant would need do to recover the property seized would be to show that it was organized in this country or in some friendly or neutral country and was not doing business within the territory of an enemy or any of its allies. The fact that it was owned or controlled by enemy interests and might sap the strength of this nation through economic warfare

would be immaterial. We agree that a construction so destructive of the objectives of the 1941 amendment to §5(b) must be rejected."

* * * * *

"We find not the slightest suggestion that Congress was concerned under this Act with property or controlled by friendly or neutral powers and in no way utilized by the Axis. Those interests were not waging economic warfare against us."

To the same general effect is the following statement from the opinion (332 U. S. 488):

"The power of seizure and vesting was extended to all property of any foreign country or national so that no innocent appearing device could become a Trojan horse."

The Court did not define enemy taint in this opinion but it did clearly enunciate that the purpose of the amendment was protection, and not enlarged powers of confiscation at the expense of a neutral corporation which was not utilized by the enemy during the war.

Here we have no concealment of enemy assets and no utilization for economic warfare.[8] If the true purpose of the amendment is protection, it follows that the property

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8 This case is wholly unlike the cases more usually presented for judicial determination in which enemy interests have been concealed or in which the enemy has made a transfer of property in contemplation of seizure. *Standard Oil Co.* v. *Clark*, 163 F. (2d) 917 (C. A. 2) c. d., 333 U. S. 873; *Kaneme Fujino* v. *Clark*, 172 F. (2d) 384 (C. A. 9), c. d., 337 U. S. 937; *American Transatlantic Co.* v. *United States*, 83 F. Supp. 832 (Ct. Cl.); *Draeger Shipping Co.* v. *Crowley*, 55 F. Supp. 906 (S. D. N. Y.). In this case the gift was made in

of the neutral corporation must be utilized by the enemy or the enemy must exercise voting control. The Custodian may, of course, seize the assets on suspicion of such utilization. But when the neutral corporation affirmatively shows that it was not so used the property must be returned.

Relevant legislative provisions.—Our position is supported by the statutory provisions permitting the return of vested property to a neutral corporation where the enemy control or ownership was less than 50 per cent of the corporate stock after December 7, 1941, provided that it was not actually utilized by the enemy.[9]

1931. All of the facts at all times have been completely revealed by the petitioner, which made all of its records in Switzerland available to the Government, and by the individuals concerned. Similarly, *Beck* v. *Clark*, 182 F. (2d) 315 (C. A. 2), is wholly different because it involved a sale of American shares by German owners in Germany after the beginning of the European war in November, 1939, and a concealed reservation of the right to buy the stock back. No reservation whatsoever of the rights transferred to Fritz von Opel was made and there was no concealment.

9 Section 32(a)(3)(E) of the Act, noted in the former opinion (332 U. S. 490), provides that administrative return of vested property shall not be made to "a foreign corporation or association which at any time after December 7, 1941, was controlled or 50 per centum or more of the stock of which was owned" by enemies. A cognate provision, Section 32(a)(3) provides for the return of vested property upon a determination that it was not after September 1, 1939 "held or used, by or with the assent of the person who was the owner thereof immediately prior to vesting in or transfer to the Alien Property Custodian, pursuant to any arrangement to conceal any property or interest within the United States of any" enemy. The phrase "enemy taint" in the legislative history first appears in the discussion of the bills which became Section 32. Senate Rep. No. 920 of February 4, 1946 (p. 8) on H. R. 4571. House Rep. No. 1219 of November 20, 1945 (p. 8), Hearings on H. R. 3750 (77th Cong., 1st Sess.), p. 33.

The petitioner's position is further supported by the Brussels Agreement of December 5, 1947, approved by the Joint Resolution of September 28, 1950, c. 1094, 64 Stat. 1079 (50 U. S. C. App. 40), in respect of conflicting Allied claims to German property. Article 11(b) defines a German enterprise as one in which at least 50 per centum of the voting rights, stock, or other proprietary interest is owned by German enemies or in which German enemies "*directly* control policy, management, voting power or operations of the enterprise * * *."[10]

These statutory provisions indicate the intent of Congress to require actual enemy ownership of at least 50 per cent. of the stock of a neutral corporation or direct control of its policy and operation to condemn it as enemy tainted. This represents the policy of Congress even in cases of administrative return under Section 32 in which a judicial remedy may not be available. It is a clear indication of what Congress intended should be returned where, as here, the neutral corporation is given a right to sue under the Act. See also Section 9(b)(11) of the Act, *infra* page 41.

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10 Article 11(b) provides that an enterprise shall be deemed German controlled if German enemies hold directly or indirectly (Dept. State Bull., Vol. 18, No. 444, Jan. 4, 1948, p. 6)

> "(i) 50 per cent. or more of the voting rights, outstanding capital stock or other proprietorship interests, or (ii) participating rights in a voting trust arrangement which rights represented 50 per cent. or more of such voting rights, outstanding capital stock or other proprietorship interests; or if at the material date German enemies directly controlled the policy, management, voting power or operations of the enterprise."

This and similar international agreements are discussed in Senate Report No. 2508, 81st Cong., 2nd Sess., 2 U. S. Code Cong. Service, p. 3968 (1950); Domke, *The Control of Corporations*, The International Law Quarterly, Vol. 3 (1950), pp. 52, 55-56.

The English decisions.—The English decisions never followed the rigid rule of the *Behn, Meyer* decision, *supra.* They adopted the more practical principle that only actual control of a neutral corporation by enemies residing in every territory made a neutral corporation an enemy. At the same time they held that an enemy interest short of *de facto* control was not sufficient to condemn a neutral corporation as an enemy.

The decisions treat a neutral or domestic corporation as an enemy either because its conduct constitutes "doing business" in enemy territory within the statutory definition or because its conduct in enemy territory, such as management of its corporate affairs in enemy territory, gives it a residence in enemy territory thus making it a statutory enemy. *De facto* control of the corporation must be exercised in enemy territory. It has been stated that "the true test is control, the analogue of that residence which invests an individual residing in an enemy country with enemy character." *Re Badische Co. Ltd.* [1921] 2 Ch. 331, 371. See also *Daimler Co. Ltd.* v. *Continental Tyre & Rubber Co.* [1916] 2 A. C. 307, 303, 351; *Overseas Trust Corp. Ltd.* v. *Godfrey* (1940), South African Law Reports, Cape of Good Hope Provincial Division, 177, 186; cf. *Fritz Schulz Jr. Co.* v. *Raimes & Co.*, 100 Misc. 697, 166 N. Y. Supp. 567, 574 (Irving Lehman, *J.*)[11].

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11 The characterization of a domestic or neutral foreign corporation as an enemy by reason of a commercial domicile in enemy territory is discussed in Ernest Schuster, *The Nationality and Domicil of Trading Corporations, Grotius Society Proceedings, Transactions,* Vol. II, pp. 57, 84 (1917); cf. E. J. Cohn, *German Enemy Property,* International Law Quarterly, Vol. 3 (1950), p. 548; Picciotto, *Alien Enemy Persons, Firms and Corporations in English Law,* 27 Yale Law Journal, 167 (1917). The concept of enemy taint also

It is this practical solution of the international problem of seizure of a neutral corporation's property that Congress accepted as shown by the legislation we have outlined above.

Practical Considerations.—These are the strongest practical reasons for increasing rather than decreasing protection of foreign investments from confiscation. The increased protection promotes and encourages expansion of world trade in order to promote a stable world social order which is the basic policy of the United States. In this respect the precedent which the Government here urges has dangerous implications. Suppose, for example, that as a result of the present difficulties Iran or Egypt should declare war on Great Britain. It would follow from the Government's position in this case that Iran or Egypt could seize or confiscate all of the assets of American corporations within their borders if these corporations happen to represent a substantial British investment, or if their stock had been pledged or put in escrow to secure a British loan.

Any test other than utilization or actual control leaves the assets of neutral corporations subject to confiscation within the uncontrolled discretion of the Custodian and the courts. There are no possible standards for the evaluation of minority interests if the test of utilization or control is not relevant. Here we have something like a pledge to secure an unexercised option to demand dividends. In other cases the interests of the enemy might run from 1%

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appears to some extent in prize cases. *The Unitas* [1950], A. C. 536; *Part Cargo ex. M. V. Glenroy* v. *Spencer* [1945], A. C. 124; *The Hamborn* [1919], A. C. 993; *The Proton* [1918], A. C. 578; *The Buena Ventura*, 175 U. S. 384; *The Wren*, 73 U. S. 582; *The Venus*, 8 Cranch. 253; Hackworth, VI *International Law*, 512; Domke, *The Control of Alien Property* (1947), p. 104.

to 49% of the stock. There is no way of evaluating the comparative importance of such minority interests in the abstract, in the absence of actual voting control or use by the enemy. Such absence of reasonable standards for confiscation would have dangerous possibilities for our own foreign investments.

We submit that the purpose of amended Section 5(b) was solely to prevent corporations organized in neutral countries from being utilized as a cloak for enemy assets or to wage economic warfare. If this be true the purpose of the Act is accomplished by seizure of the neutral property during hostilities on suspicion of its subsequent return if it be shown that it was neither utilized by nor controlled by the enemy.

However, if the position we have just outlined is not upheld, and if minority interests in a neutral corporation justify the confiscation of all of its assets, we submit there must be some limit to that power. And we think that limit was reached and exceeded here. Here we have in substance nothing but an escrow of stock of a neutral corporation to secure the performance of an agreement which does not concern the management of the corporation until some future time (1) if and when an option to demand dividends is exercised, and (2) if and when there is a demand to vote the shares to protect a right to dividends, and (3) subject to the final and further legal contingency that there is no decided case upholding such a right to vote and respectable authority against it. Thus the German interest is subject to contingency piled on contingency piled on contingency.

Apart from a possible right to vote petitioner's shares, the only other control which could be exercised in war time would be through persuasion of Frankenberg in America to commit a criminal offense by trading with the enemy.

There is no such evidence and not even such a possibility because of the trusted American management of the American companies. We think that the use of the word "enemy taint" by Justice Douglas in the former opinion necessarily implies the following conclusions:

1. A neutral corporation which is owned and controlled by enemies and utilized for the purpose of assisting an enemy's war effort is clearly a "trojan horse" and, therefore, precisely within the purview of the Supreme Court opinion.

2. A neutral corporation which is owned and controlled by enemies, which was not actually used to assist in the enemy's war effort, but the evidence indicated that it was designed and set up for that purpose, would appear to fall within the purview of "enemy taint." (It could even be admitted that if the claimant failed to establish by the preponderance of evidence that it was not so designed then the Alien Property Custodian could keep and retain the property as "enemy tainted.")

3. A neutral corporation which is owned and controlled by enemies but which was not used for the purpose of assisting the enemy's war effort and where it has been affirmatively established by the claimant that it was designed and established for a purpose other than to be utilized for the enemy's war effort, would appear to be a doubtful case as to whether it would fall within the purview of "enemy taint."

4. A neutral corporation which is not owned or controlled by enemies, which was not used to aid and abet the enemy in its war effort, and which the claimant has established through uncontroverted evidence was acquired for the purpose of precluding the enemy from obtaining or

utilizing its assets, clearly does not fall within any concept or any definition of "enemy taint."

This case must be classified within the fourth of the above categories.

Therefore, we assert that even if control or utilization is not the test of enemy taint, there must be some limit to the right of confiscation and this case certainly goes beyond that limit.

II

At the most the Custodian may confiscate the separable enemy usufruct and not petitioner's entire vested property.

Petitioner has contended, Point I, *supra*, that the asserted usufruct in petitioner's shares is wholly insufficient to characterize petitioner as an enemy and to confiscate any of its vested assets in the absence of concealment of enemy interest or utilization of petitioner by the enemy. But even if we assume that because of the usufruct in the Swiss shares there is an enemy interest in the American assets which can be confiscated here, certainly confiscation cannot go beyond that interest. The rights of the usufructuary are as separable from the rights of the neutral owner of the Swiss shares as the rights of pledgee and pledgor. Confiscation of the usufructuary interest will remove all enemy rights and vest them in the Custodian. There is no possible justification for going further.[12]

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12 The normal method for liquidation of a German interest in Swiss shares (instead of seizing the property here of the Swiss corporation) was provided by the Washington Accord, the international agreement of May 25, 1945, between Switzerland and other Allied Powers (Dept. State

This is not a case where part of the stock of a neutral corporation is held by enemies and part by citizens or friendly aliens. In such a situation if the corporation by virtue of enemy stock ownership had become no longer neutral because of the utilization of its property on behalf of the enemy, or had become subject to command and actual control by the enemy, the entire corporate assets in the United States might be seized and the corporation itself could not recover them. In such a case the question would arise whether the non-enemy stockholders could not recover their *pro tanto* interest in the vested assets. But that question is not presented here. The legal title to all the stock, except directors' qualifying shares, is in the neutral. These shares have been placed in escrow in a bank deposit box in Zurich to secure the performance of a collateral obligation with which the corporation itself is not concerned. The enemy's interest is entirely separable and the Custodian is limited to the rights given to the enemy by the escrow agreement.

For example, had petitioner's stock been deposited in an American bank under the same terms and conditions we have no doubt that the enemy's interests could have been seized, and the depositary notified that from the time of vesting the Custodian had acquired all rights of the German parents. The Custodian could have demanded dividends during the lifetime of the parents. He could have

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Bull., Vol. 14, No. 365, dated June 30, 1946, p. 1121), under which Switzerland has liquidated German property in Switzerland for the benefit of the Allies. The Washington Accord, the Brussels Agreement, *supra*, p. 20, and the Act provide a comprehensive scheme for control of enemy property under which an enemy interest in Swiss shares is dealt with by seizure of that interest in Switzerland rather than by seizure here of all of the American property of the Swiss corporation.

exercised such voice in the management as the law permitted. But it is unbelievable that he could confiscate any more.[13]

Here the stock was in Switzerland. But assume the novel doctrine that Section 5(b) authorized the Custodian to reach such German interests in stock of neutral corporations held in escrow abroad by seizing the corporate assets in this country. Certainly it cannot be contended that because the stock itself is not available the right to confiscate is enlarged beyond what it would have been had the stock of the neutral been in this country.

The extent of the enlargement of that right to seize and retain more than the enemy interests indulged by the courts below in this case is fantastic. The enemy had the right to 80 per cent of the dividends from this corporation during the lifetime of two people both of whom were over

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13 The District Court saw fit to disbelieve that the Opel parents waived their usufructuary interest (R. 60) although, petitioner submits, the waiver was established by the uncontradicted testimony (R. 39, 456, 1001, 1053, 1611) and documentary evidence (R. 1825, 1899, 1907, 1912, 1950). Moreover the petitioner has contended that the usufructuaries never obtained and maintained that copossession of petitioner's shares, excluding the owner from independent access to them, which under German law was the absolutely essential legal prerequisite to the establishment and maintenance of the usufruct. The District Court correctly found that such copossession was necessary under German law (R. 57, 314, 1351) but incorrectly concluded that such copossession was established by delivering a key to Frankenberg for Fritz Von Opel's deposit box where the shares were kept. Such copossession was not established because at all times Fritz von Opel had independent access to his deposit box, and furthermore Fritz von Opel gave Frankenberg access to the box not alone but only together with Adolph Gang, another director of petitioner (R. 816, 857, 2060).

65 years old at the time of vesting. By invoking amended Section 5(b) the Custodian seeks to confiscate practically the entire corporate assets worth perhaps a hundred times the value of the enemy interest.

The error of the court below lies in its misconception of the word "taint." It is treated as if it were some kind of infection which spread from the Swiss shares in escrow to the assets in America as rot spreads through an apple, and thus rendered them unfit to be retained by a neutral corporation even though the neutral corporation had in no way subjected itself to any control by the enemy.

What the court in the former *Uebersee* case clearly means is that enemy taint exists where a corporation has so conducted itself or been so directed by the enemy that it has lost its neutral status by becoming a cloak for the enemy. This did not happen here. The neutral corporation which seeks to get back its assets here was never enemy directed, utilized or controlled. It never lost its neutral status.

If, therefore, Section 5(b) can be construed (which we deny) as a method of reaching enemy interests in pledged or escrowed certificates of stock which certificates of stock cannot be reached in this country, it is an unbelievable extension of that novel doctrine to say that interests greater than that of the enemy pledgee or beneficiary of the escrow can be confiscated.

The court below laid great emphasis on the fact that the escrow agreement created a right *in rem* in the enemy. But even so, on what theory can anything more than that particular right *in rem* be confiscated by the Custodian? It is like saying the mortgage on property to an enemy taints the equity which the mortgagor has in the property after the debt is satisfied.

The consequences of such a precedent are far-reaching indeed. It abandons the sound theory that the only reason

for confiscating a neutral corporation's property is that it has become an enemy or ally of the enemy. It subjects neutral corporations to the destruction of their entire property because of some entirely collateral interest which an enemy has in its negotiable certificates of stock held in escrow to secure the performance of agreements by its non-enemy stockholders. Certainly a neutral corporation does not become tainted as an ally of the enemy because its stockholders pledged their stock to a German unless as a result of that pledge the corporation becomes controlled by German enemies.

Petitioner submits, therefore, that at least its vested property should be returned subject at most to retention of the usufructuary right to 80 per cent of the dividends for the lives of the German beneficiaries.

III

The two make-weight considerations relied on by the District Court to support its conclusion of enemy taint of petitioner are actually irrelevant to that issue.

The District Court below affirmatively held that the Liechtenstein citizenship of Fritz von Opel, petitioner's principal stockholder, was valid (R. 52).[14] However, the Court stressed the fact that Fritz von Opel paid approximately $10,000 in connection with obtaining his citizenship, was in Liechtenstein only very briefly, and never took an oath of allegiance to Liechtenstein or formally renounced his German citizenship (R. 49).

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14 The Court of Appeals made no reference to and apparently placed no reliance on these make-weight considerations but relied solely on the view that the usufruct alone in petitioner's shares constituted enemy "beneficial ownership" of petitioner's assets warranting their confiscation.

The Liechtenstein law required a payment to be fixed by the Government for acquisition of citizenship (R. 53, 1953). It was not disputed that under German law upon acquisition of Liechtenstein nationality Fritz von Opel lost German nationality unless it was expressly reserved by application approved by the German government (R. 1097). Fritz von Opel testified that he never applied for such approval (R. 392) and other evidence supported his testimony and proved his desire to renounce German nationality (R. 1617). Indeed, there was no way of formally renouncing citizenship except by failing to apply for approval. Complete severing of his ties with Germany is further supported by the fact that in spite of his acquaintances and connections in Germany, Fritz von Opel in 1929 left Germany and abandoned his residence there and returned only for brief visits amounting to only ten per cent. of the time (R. 52). Finally, it should be noted that in 1940, after war broke out in Europe, he came to the United States, where he resided until 1950.

Of course, prior to the war with the United States it was natural that Fritz von Opel should have interest in, and sympathy for, the welfare of Germany. The court, however, did not find that he had any Nazi sympathies and affirmatively limited its findings (R. 53) concerning his German sympathies to the period before the war with the United States. This was very necessary because, as the record shows, he was not a Nazi sympathizer (R. 392, 2199-2211) and aided the United States war effort (R. 393).

There is, therefore, no basis in the record for utilizing Fritz von Opel's former nationality and his Liechtenstein citizenship as evidence that he was a person likely to submit to enemy control and on such evidence concluding that petitioner was enemy tainted.

An additional circumstance stressed by the District Court as evidence of enemy taint was the fact that petitioner owned a Hungarian subsidiary, Transdanubia Bauxite, A.G., which mined bauxite in Hungary. In 1939 petitioner through a Swiss bank arranged for a guarantee of a Hungarian bank loan to Transdanubia in the amount of approximately $7,000. The Court concluded in its opinion (R. 50):

> "While it is true there is no showing that plaintiff executed any control over it's subsidiary after December 1941, it appears plaintiff never took affirmative steps to sever its relations with Transdanubia. Thus plaintiff had an interest in and an association with an enemy corporation during World War II which apparently supplied war materials to the enemies of the United States."[15]

Certainly the ownership of stock by a parent corporation does not constitute doing business by the parent in the state where the subsidiary does business.[16] Even limited

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15 The trial court said "apparently" because there was no evidence of such activity after war between the United States and Germany commenced.

16 *Peterson* v. *Chicago, R. I. & P. R. Co.*, 205 U. S. 364, 391; cf. *Cannon Manufacturing Co.* v. *Cudahy Packing Co.*, 267 U. S. 333; *People's Tobacco Co.* v. *American Tobacco Co.*, 246 U. S. 79; *Echeverry* v. *Kellogg Switchboard & Supply Co.*, 175 F. (2d) 900 (C. C. A. 2). The definition of "doing business" in these decisions was the meaning of "doing business" intended by Congress in using this phrase in Section 2 of the Trading with the Enemy Act. Senate Report No. 113, p. 4 and Hearings, pp. 136-7 on H. R. 4960 (65th Cong., 1st Sess.). In *Compagnie Internationale de Produits Alimentaires* v. *Miller*, 266 U. S. 473, the case was remanded to determine whether the Swiss corporation had been "doing

activities in enemy or enemy-occupied territory necessary to preserve a corporation's entity is not "carrying on business."[17]

The District Court, therefore, correctly held that the relationship of petitioner with its Hungarian subsidiary was not trading with the enemy preventing recovery of the vested assets (R. 49). The only fault the court found was with petitioner's failure to take affirmative steps to sever its relationship with its subsidiary. The court did not point out what these affirmative steps might be. The only one we can think of would have been to transfer the subsidiary to the Hungarian government or sell it to a Hungarian citizen. That certainly would have been an act friendly to the enemy and could not have improved Uebersee's position. The only other step we can conceive of is to sell the subsidiary in enemy territory to some neutral, an obvious impossibility during wartime.

We, therefore, submit that neither of the make-weight considerations advanced by the trial court in behalf of its position had any bearing whatever on enemy taint.

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business" in Germany. The Supreme Court of the District of Columbia stated (Equity No. 42058 unreported decision of November 6, 1928, Bailey, *J.*): "It is clear that Congress in using the words 'doing business' had in mind the construction placed upon them by the Supreme Court and I think that Court in the case of *Cannon Mfg. Co.* v. *Cudahy Packing Co.* is conclusive of this case. It results therefore that the plaintiff is led to the relief sought in its bill."

[17] *Central India Mining Company* v. *Societe Coloniale Anversoise*, [1920] 1 K. B. 753; *Re Hilckes, ex parte Muhesa Rubber Plantations*, [1917] I K. B. 48, Webber, *Effect of War on Contracts* (2nd Ed. 1946), page 114; Howard, *Trading with the Enemy* (1943), page 12; McNair, *Legal Effects of War* (1948), p. 65.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the decision of the Court of Appeals should be reversed.

Respectfully submitted,

THURMAN ARNOLD,
EDWARD J. ENNIS,
HARRY M. PLOTKIN,
Attorneys for Petitioner,
Uebersee Finanz-Korporation, A.G.

ARNOLD, FORTAS & PORTER,
Ring Building, Washington, D. C.

GALLAGHER, OSHERMAN, CONNOR & BUTLER,
Bowen Building, Washington, D. C.

EDWARD J. ENNIS,
165 Broadway, New York, N. Y.
Of Counsel.

APPENDIX

Trading with the Enemy Act, c. 106, 40 Stat. 411, as amended (50 U. S. C. App. 1-40) provides in part:

Section 2. The word "enemy" as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States, and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy".

The words "ally of enemy", as used herein, shall be deemed to mean—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require may, by proclamation, include within the term "ally of enemy".

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Section 5 (as amended by Section 301 of the First War Powers Act of 1941, c. 593, 55 Stat. 839) provides in part:

* * * * *

(b)(1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest of property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign prop-

erty, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person; and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision. * * *

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Section 7 provides in part:

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(c) If the President shall so require any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade marks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this Act.

* * * * * *

The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this Act, and in the event of sale or other disposition of such property by the Alien Property Custodian, shall be limited to and enforced against the net proceeds received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States.

Section 9 provides in part:

(a) Any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been convened, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from any enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any

right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principle place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

(b) In respect of all money or other property conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so con-

veyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was—

(1) A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary, and is at the time the return of such money or other property hereunder a citizen or subject of any such nation or State or free city, or

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(11) A partnership, association, or other unincorporated body of individuals having its place of business within any country other than Germany, Austria, Hungary or Austria-Hungary, or a corporation organized or incorporated within any country other than Germany, Austria, Hungary, or Austria-Hungary, and that the control of, or more than 50 per centum of the interests or voting power in, any such partnership, association, other unincorporated body of individuals, or corporation, was at such time, and is at the time of the return of any money or other property, vested in citizens or subjects of nations, States, or free cities other than Germany, Austria, Hungary, or Austria-Hungary: *Provided, however,* That this subsection shall not affect any rights which any citizen or subject may have under paragraph (1) of this subsection; * * *.

Sec. 32(a). The President, or such officer or agency as he may designate, may return any property or interest vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the net proceeds thereof, whenever the President or such officer or agency shall determine—

* * * * * *

(2) that such owner, and legal representative or successor in interest, if any, are not—

* * * * *

(E) a foreign corporation or association which at any time after December 7, 1941, was controlled or 50 per centum or more of the stock of which was owned by any person or persons ineligible to receive a return under subdivisions (A), (B), (C), or (D) hereof: *Provided*, That notwithstanding the provisions of this subdivision (E), return may be made to a corporation or association so controlled or owned, if such corporation or association was organized under the laws of a nation any of whose territory was occupied by the military or naval forces of any nation with which the United States has at any time since December 7, 1941, been at war, and if such control or ownership arose after March 1, 1938, as an incident to such occupation and was terminated prior to the enactment of this section; and

(3) that the property or interest claimed, or the net proceeds of which are claimed, was not at any time after September 1, 1939, held or used, by or with the assent of the person who was the owner thereof immediately prior to vesting in or transfer to the Alien Property Custodian, pursuant to any arrangement to conceal any property or interest within the United States of any person ineligible to receive a return under subsection (a) (2) hereof; * * *.

Joint Resolution of September 28, 1950, c. 1094, 64 Stat. 1079 (50 U. S. C. App. 40) provides:

The President, or such officer or agency as he may designate, is authorized to conclude and give effect to agreements to further the amicable and expeditious settlement of intercustodial conflicts involving enemy property, subject to the following:

(1) The authority granted in this section shall extend only to agreements with governments with which the United States was not at war in World War II.

(2) Such agreements shall be in accordance with the policy of protecting and making available for utilization the American and nonenemy interests in such property and further the elimination of enemy interests in such property and the efficient administration and liquidation of enemy property in the United States.

(3) For the purposes of this section, the United States as to any intergovernmental agreements hereafter negotiated shall seek treatment equal to that accorded United States nationals for persons who, although citizens or residents of an enemy country before or during World War II, were deprived of full rights of citizenship or substantially deprived of liberty by laws, decrees, or regulations of such enemy country discriminating against racial, religious, or political groups: *Provided*, That on the effective date of this Resolution such persons were (1) permanent residents of the United States and (2) had declared their intention to become citizens of the United States in conformity with the provisions of the Nationality Act of 1940, as amended; and that such persons shall have acquired citizenship of the United States prior to the effective date of any intergovernmental agreement hereafter negotiated.

(4) Reimbursement to the United States by other governments pursuant to such agreements shall be administered as vested property: *Provided*, That nothing contained in this section shall hinder, restrict or limit the payment of claims from the War Claims Fund established by section 13 of the War Claims Act of 1948 * * * as amended.